

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-209285

DATE: March 22, 1983

MATTER OF: George J. Keenan and Gerald S. Goodman -
Travel Expenses and Grant of Leave to
Attend Meeting as Labor Organization
DIGEST: Representatives

1. Prior to the effective date of the Civil Service Reform Act of 1978, two employees of the Defense Contract Audit Agency incurred travel expenses while attending a meeting in their capacity as union representatives. The employees are not entitled to reimbursement for travel that is not certified to be of primary interest to the Government, since neither Executive Order 11491 nor the applicable Joint Travel Regulations (2 JTR para. C4506) authorizes such reimbursement. Neither labor nor management called the meeting or requested the participation of the employees, and the meeting was for purposes of discussion only.
2. The determination of whether to excuse employees from duty without charge to leave when the employees are representing labor organizations at a meeting is within the discretion of the agency. Such determination will stand unless the agency action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

This is in response to a request from the American Federation of Government Employees (AFGE), for reconsideration of our Claims Group's settlements, Z-2709738, and Z-2709739, dated April 4, 1977. The settlements disallowed the claims of Messrs. George J. Keenan (now deceased) and Gerald S. Goodman for grant of leave and reimbursement for

travel expenses incurred when they attended a meeting in Washington, D.C., on September 2, 1975. The original request for reconsideration was dated May 11, 1977. However, due to a clerical error the claim was filed without any further action. This was brought to the attention of the Claims Group by a letter from the AFGE dated August 17, 1982. The AFGE contends in its letter that the meeting in question was in the best interest of the Government, that management officials attended, and therefore the claims should be allowed. For the reasons stated below, we sustain the denial of the claims.

BACKGROUND

The meeting, which Messrs. Keenan and Goodman attended, was convened by the Wisconsin congressional delegation for the purpose of discussing the prospective closing of the Defense Contract Audit Agency (DCAA), Milwaukee branch office. At the time of the travel covered by the claim, Messrs. Keenan and Goodman were employed as auditors with DCAA. However, their presence at the meeting was due to their official positions in AFGE Local 3529; Mr. Keenan was Acting President and Mr. Goodman an Acting Vice President. The union officials were called to the meeting on short notice. Therefore, neither had the opportunity to obtain advance approval for leave or travel. In fact, the agency had no knowledge, prior to the meeting, that the union was asked to send representatives.

Subsequent to the meeting, both employees submitted travel vouchers for trip expenses. The Agency denied their request for travel reimbursement citing section C3506 (now C4506) of 2 Joint Travel Regulations (2 JTR), which deals with travel of employees serving as labor organization representatives, and provides reimbursement for attendance at meetings that are certified to be of primary interest to the United States. In addition, the agency charged Messrs. Keenan and Goodman annual leave for the time they were absent from work while attending the meeting. It was the agency's contention that the meeting was not in the best interest of the Government. The Claims Group concurred with the findings of the agency and disallowed the employee's claims.

DISCUSSION

Since the travel in question took place prior to the Civil Service Reform Act of 1978, Pub. L. 95-454, 92 Stat. 1111 (1978), the claim must be decided under Executive Order 11491, 34 Fed. Reg. 17605-17615 (1969), as amended, and the Joint Travel Regulations, 2 JTR para. C4506. In addition, guidelines for granting excused absence to employees without charge to leave (commonly called administrative leave) are discussed in FPM Supplement 990-2, Book 630, subchapter 11.

Temporary duty assignments involving labor-management activities are authorized for employees of the Department of Defense under certain conditions. Employees may be afforded the time and opportunity to attend and participate in certain types of meetings when the meetings fulfill specific assignment conditions. Thus, 2 JTR para. C4506 provides that:

- "1. GENERAL. The conditions for temporary duty assignments will apply when employees serving as labor organization representatives perform travel to attend labor-management meetings that are certified to be of primary interest to the United States." (Emphasis added.)

The agency refused to certify the travel by Messrs. Keenan and Goodman to attend the meeting in Washington as being "of primary interest to the United States." The DCAA contended that the meeting was not a labor-management meeting as contemplated by 2 JTR para. C4506. That provision provides certain standards for certification in 2 JTR para. C4506-2-2, as follows:

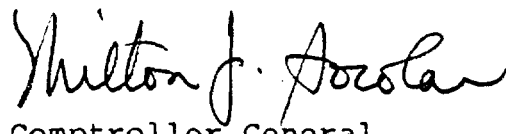
"that the travel is incident to participation in activities such as joint labor-management cooperation committees concerning, but not limited to, prevention of accidents, reduction of absenteeism, improving communications, insuring equal employment opportunity, and maintaining employee productivity and moral; * * *

The record supports the Agency's position. The meeting was convened by the Wisconsin congressional delegation for

purposes of discussion only. Moreover, neither the union nor management requested the meeting or the participation of Messrs. Keenan and Goodman. Further, the fact that other agency officials attended the meeting and were given travel expenses has no bearing on whether Messrs. Keenan and Goodman should be reimbursed. The entitlement to travel expenses in question is dependent on Executive Order 11491, and the applicable regulations. We see nothing in the Executive Order that provides for such reimbursement, and, as shown above, the agency was in compliance with the standards outlined in 2 JTR para. C4506. See Henry Kaiser, B-195409, July 7, 1980. Thus, under these circumstances we do not find DCAA's determination to be incorrect.

The Agency also refused to grant the employees administrative leave for the trip. While leave for representing employee's organization may be granted, such determinations are within the discretion of the agency. See FPM Supplement 990-2, Book 630, subchapter S11-5f. Where agency action is committed to agency discretion, the standard to be applied by the reviewing authority is whether the agency action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 54 Comp. Gen. 310 (1974). There is no evidence in the record that the agency's action lacked a rational basis. Therefore, we find nothing improper in either the charge of annual leave or the denial of travel expenses.

Accordingly, the claims of Messrs. Keenan and Goodman are disallowed.

for 
Comptroller General
of the United States